

A bill for an act

relating to elections; changing certain provisions concerning vacancies in nomination; amending Minnesota Statutes 2008, sections 203B.12, subdivision 2; 204B.04, subdivisions 2, 3; 204B.07, subdivision 1; 204B.09, subdivision 1; 204B.11, subdivision 2; 204B.13, subdivisions 1, 2, by adding subdivisions; repealing Minnesota Statutes 2008, sections 204B.12, subdivision 2a; 204B.13, subdivisions 4, 5, 6; 204B.41; 204D.169.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 203B.12, subdivision 2, is amended to read:

Subd. 2. **Examination of return envelopes.** Two or more election judges shall examine each return envelope and shall mark it accepted or rejected in the manner provided in this subdivision. ~~If a ballot has been prepared under section 204B.12, subdivision 2a, or 204B.41, the election judges shall not begin removing ballot envelopes from the return envelopes until 8:00 p.m. on election day, either in the polling place or at an absentee ballot board established under section 203B.13.~~

The election judges shall mark the return envelope "Accepted" and initial or sign the return envelope below the word "Accepted" if the election judges or a majority of them are satisfied that:

(1) the voter's name and address on the return envelope are the same as the information provided on the absentee ballot application;

(2) the voter's signature on the return envelope is the genuine signature of the individual who made the application for ballots and the certificate has been completed as prescribed in the directions for casting an absentee ballot, except that if a person other than the voter applied for the absentee ballot under applicable Minnesota Rules, the signature is not required to match;

(3) the voter is registered and eligible to vote in the precinct or has included a properly completed voter registration application in the return envelope; and

(4) the voter has not already voted at that election, either in person or by absentee ballot.

There is no other reason for rejecting an absentee ballot. In particular, failure to place the ballot within the security envelope before placing it in the outer white envelope is not a reason to reject an absentee ballot.

The return envelope from accepted ballots must be preserved and returned to the county auditor.

If all or a majority of the election judges examining return envelopes find that an absent voter has failed to meet one of the requirements prescribed in clauses (1) to (4), they shall mark the return envelope "Rejected," initial or sign it below the word "Rejected," and return it to the county auditor.

Sec. 2. Minnesota Statutes 2008, section 204B.04, subdivision 2, is amended to read:

Subd. 2. **Candidates seeking nomination by primary.** No individual who seeks nomination for any partisan or nonpartisan office at a primary shall be nominated for the same office by nominating petition, except as otherwise provided for partisan offices in section 204D.10, subdivision 2, ~~and for nonpartisan offices in section 204B.13, subdivision 4.~~

Sec. 3. Minnesota Statutes 2008, section 204B.04, subdivision 3, is amended to read:

Subd. 3. **Nomination for nonpartisan office.** No individual shall be nominated by nominating petition for any nonpartisan office ~~except in the event of a vacancy in nomination as provided in section 204B.13.~~

Sec. 4. Minnesota Statutes 2008, section 204B.07, subdivision 1, is amended to read:

Subdivision 1. **Form of petition.** A nominating petition may consist of one or more separate pages each of which shall state:

(a) the office sought;

(b) the candidate's name and residence address, including street and number if any; and

(c) the candidate's political party or political principle expressed in not more than three words. No candidate who files for a partisan office by nominating petition shall use the term "nonpartisan" as a statement of political principle or the name of the candidate's political party. No part of the name of a major political party may be used to designate the

political party or principle of a candidate who files for a partisan office by nominating petition, except that the word "independent" may be used to designate the party or principle. ~~A candidate who files by nominating petition to fill a vacancy in nomination for a nonpartisan office pursuant to section 204B.13, shall not state any political principle or the name of any political party on the petition.~~

Sec. 5. Minnesota Statutes 2008, section 204B.09, subdivision 1, is amended to read:

Subdivision 1. **Candidates in state and county general elections.** (a) Except as otherwise provided by this subdivision, affidavits of candidacy and nominating petitions for county, state, and federal offices filled at the state general election shall be filed not more than 70 days nor less than 56 days before the state primary. The affidavit may be prepared and signed at any time between 60 days before the filing period opens and the last day of the filing period.

(b) Notwithstanding other law to the contrary, the affidavit of candidacy must be signed in the presence of a notarial officer or an individual authorized to administer oaths under section 358.10.

(c) This provision does not apply to candidates for presidential elector nominated by major political parties. Major party candidates for presidential elector are certified under section 208.03. Other candidates for presidential electors may file petitions on or before the state primary day pursuant to section 204B.07. ~~Nominating petitions to fill vacancies in nominations shall be filed as provided in section 204B.13.~~ No affidavit or petition shall be accepted later than 5:00 p.m. on the last day for filing.

(d) Affidavits and petitions for county offices must be filed with the county auditor of that county. Affidavits and petitions for federal offices must be filed with the secretary of state. Affidavits and petitions for state offices must be filed with the secretary of state or with the county auditor of the county in which the candidate resides.

(e) Affidavits other than those filed pursuant to subdivision 1a must be submitted by mail or by hand, notwithstanding chapter 325L, or any other law to the contrary and must be received by 5:00 p.m. on the last day for filing.

Sec. 6. Minnesota Statutes 2008, section 204B.11, subdivision 2, is amended to read:

Subd. 2. **Petition in place of filing fee.** At the time of filing an affidavit of candidacy, a candidate may present a petition in place of the filing fee. The petition may be signed by any individual eligible to vote for the candidate. A nominating petition filed pursuant to section 204B.07 ~~or 204B.13, subdivision 4,~~ is effective as a petition in place of

a filing fee if the nominating petition includes a prominent statement informing the signers of the petition that it will be used for that purpose.

The number of signatures on a petition in place of a filing fee shall be as follows:

(a) for a state office voted on statewide, or for president of the United States, or United States senator, 2,000;

(b) for a congressional office, 1,000;

(c) for a county or legislative office, or for the office of district judge, 500; and

(d) for any other office which requires a filing fee as prescribed by law, municipal charter, or ordinance, the lesser of 500 signatures or five percent of the total number of votes cast in the municipality, ward, or other election district at the preceding general election at which that office was on the ballot.

An official with whom petitions are filed shall make sample forms for petitions in place of filing fees available upon request.

Sec. 7. Minnesota Statutes 2008, section 204B.13, subdivision 1, is amended to read:

Subdivision 1. **Death or withdrawal.** A vacancy in nomination may be filled in the manner provided by this section. A vacancy in nomination exists when:

~~(a) (1) a major political party candidate or nonpartisan candidate who was nominated at a primary dies or files an affidavit of withdrawal as provided in section 204B.12, subdivision 2a; or~~

~~(b) a candidate for a nonpartisan office, for which one or two candidates filed, dies or files an affidavit of withdrawal as provided in section 204B.12, subdivision 1; (2) a major political party candidate who was nominated at a primary or the candidate's legal guardian files an affidavit of vacancy at least one day prior to the general election with the same official who received the affidavit of candidacy that states that:~~

~~(i) the candidate has a catastrophic illness that was diagnosed after the deadline for withdrawal; and~~

~~(ii) the candidate's illness will permanently and continuously incapacitate the candidate and prevent the candidate from performing the duties of the office sought.~~

~~The affidavit must be accompanied by a certificate verifying that the candidate's illness meets the requirements of this clause, signed by at least two licensed physicians.~~

Sec. 8. Minnesota Statutes 2008, section 204B.13, subdivision 2, is amended to read:

Subd. 2. **Partisan office; nomination by party.** ~~(a) A vacancy in nomination for partisan office shall be filled as provided in this subdivision effectively remove that office from the ballot. Votes cast at the general election for that office are invalid and the office~~

must be filled in a special election held in accordance with section 204D.17, except as provided by this section.

Except for the vacancy in nomination, all other candidates whose names would have appeared on the general election ballot for this race must appear on the special election ballot for this race. There must not be a primary to fill the vacancy in nomination.

A major political party has the authority to fill a vacancy in nomination of that party's candidate by filing a nomination certificate with the same official who received the affidavits of candidacy for that office.

(b) A major political party may provide in its governing rules a procedure, including designation of an appropriate committee, to fill vacancies in nomination for all federal and state offices ~~elected statewide~~. The nomination certificate shall be prepared under the direction of and executed by the chair and secretary of the political party and filed within ~~seven~~ 14 days after the vacancy in nomination occurs ~~or before the 14th day before the general election, whichever is sooner. If the vacancy in nomination occurs through the candidate's death or catastrophic illness, the nomination certificate must be filed within seven days after the vacancy in nomination occurs but no later than four days before the general election~~ but no later than seven days after the general election. The chair and secretary when filing the certificate shall attach an affidavit stating that the newly nominated candidate has been selected under the rules of the party and that the individuals signing the certificate and making the affidavit are the chair and secretary of the party.

Sec. 9. Minnesota Statutes 2008, section 204B.13, is amended by adding a subdivision to read:

Subd. 7. **Date of special election.** The special election must be held on the second Tuesday in December.

Sec. 10. Minnesota Statutes 2008, section 204B.13, is amended by adding a subdivision to read:

Subd. 8. **Absentee voters.** The county auditor shall mail an absentee ballot for the special election under this section to each applicant for an absentee ballot whose application for an absentee ballot for the preceding general election was recorded under section 203B.04. If the vacancy in nomination is filled before the general election, the county auditor shall mail the ballot no earlier than the general election and no later than five days after the general election. If the vacancy is filled after the general election, the county auditor must mail the ballot no later than five days after the vacancy is filled.

6.1        Sec. 11. **REPEALER.**

6.2                Minnesota Statutes 2008, sections 204B.12, subdivision 2a; 204B.13, subdivisions  
6.3 4, 5, and 6; 204B.41; and 204D.169, are repealed.

**204B.12 WITHDRAWAL OF CANDIDATES.**

Subd. 2a. **After primary; candidates for constitutional office.** (a) A candidate for a constitutional office may withdraw from the general election ballot by filing an affidavit of withdrawal with the same official who received the affidavit of candidacy. The affidavit must request that official to withdraw that candidate's name from the ballot and must be filed no later than 16 days before the general election.

(b) A candidate for a constitutional office may withdraw after the deadline in paragraph (a) if:

(1) the candidate withdraws because of a catastrophic illness that was diagnosed after the deadline for withdrawal;

(2) the candidate's illness will permanently and continuously incapacitate the candidate and prevent the candidate from performing the duties of the office sought; and

(3) the candidate or the candidate's legal guardian files with the affidavit of withdrawal a certificate verifying that the candidate's illness meets the requirements of clauses (1) and (2), signed by at least two licensed physicians.

**204B.13 VACANCY IN NOMINATION.**

Subd. 4. **Nonpartisan office; filling vacancy by nominating petitions.** A vacancy in nomination in a nonpartisan office may be filled by nominating petition in the manner provided in sections 204B.06 to 204B.09. The petition shall be filed within one week after the vacancy in nomination occurs, but not later than four calendar days before the election.

An eligible voter is eligible to sign a nominating petition to fill a vacancy in nomination without regard to whether that eligible voter intends to vote or did vote for any candidate for that office at the primary or signed other nominating petitions for candidates for that office.

Subd. 5. **Candidates for governor and lieutenant governor.** (a) If a vacancy in nomination occurs in the race for governor, the candidate for governor determined under this section shall select the candidate for lieutenant governor. If a vacancy in nomination occurs in the race for lieutenant governor, due to a vacancy in nomination for governor or due to the withdrawal or death of the candidate for lieutenant governor, the candidate for governor shall select the candidate for lieutenant governor as provided in this subdivision.

(b) For a vacancy in nomination that occurs before the 16th day before the general election, the name of the lieutenant governor candidate must be submitted by the governor candidate to the filing officer within seven days after the vacancy occurs, or before the 14th day before the general election, whichever is sooner. If the vacancy in nomination occurs through the death or catastrophic illness of the candidate for lieutenant governor, the candidate for governor shall submit the name of the new lieutenant governor candidate to the secretary of state within seven days after the vacancy in nomination occurs but no later than four days before the general election. If the vacancy in nomination occurs through the death or catastrophic illness of the candidate for governor, the new candidate for governor shall submit the name of the lieutenant governor candidate within seven days after the vacancy in nomination for governor is filled under section 204B.13, subdivision 2, but no later than four days before the general election.

Subd. 6. **Vacancy after deadline.** If a candidate withdraws after the 16th day before the general election but before four days before the general election, the secretary of state shall instruct the election judges to strike the name of the withdrawn candidate from the general election ballot and shall substitute no other candidate's name. Filing officers may not accept a nomination certificate for filing to fill a vacancy in nomination resulting from the filing of an affidavit of withdrawal by a candidate after the 14th day before the general election. Vacancies occurring through death or catastrophic illness after the 16th day before the general election are governed by section 204B.41.

**204B.41 VACANCY IN NOMINATION; CHANGING BALLOTS.**

When a vacancy in nomination occurs through the death or catastrophic illness of a candidate after the 16th day before the general election, the officer in charge of preparing the ballots shall prepare and distribute a sufficient number of separate paper ballots which shall be headed with the words "OFFICIAL SUPPLEMENTAL BALLOT." This ballot shall contain the title of the office for which the vacancy in nomination has been filled and the names of all the candidates nominated for that office. The ballot shall conform to the provisions governing the printing of other official ballots as far as practicable. The title of the office and the names of the candidates for that office shall be blotted out or stricken from the regular ballots by the election

## APPENDIX

Repealed Minnesota Statutes: s0745-1

judges. The official supplemental ballot shall be given to each voter when the voter is given the regular ballot or is directed to the voting machine. Regular ballots shall not be changed nor shall official supplemental ballots be prepared as provided in this section during the six calendar days before an election. Absentee ballots that have been mailed prior to the preparation of official supplemental ballots shall be counted in the same manner as if the vacancy had not occurred. Both an official supplemental ballot and a replacement regular ballot from which the title of the office and names of the candidates for that office have been blotted out or stricken as provided in this section must be provided to each absentee voter or voter residing in a precinct voting by mail who requests either of them under section 203B.06, subdivision 3. The election judges conducting absentee voting in health care facilities as provided in section 203B.11, subdivision 1, must deliver official supplemental ballots and replacement regular ballots to those facilities no later than 5:00 p.m. on the day before the election.

### **204D.169 EXAMPLE SUPPLEMENTAL BALLOT.**

When an official supplemental ballot must be used in a general election in accordance with section 204B.41, the secretary of state shall supply each auditor with a copy of an example supplemental ballot at least three days prior to the election. The example supplemental ballot must illustrate the format required for the official supplemental ballot.

The county auditor shall distribute copies of the example supplemental ballot to municipal and school district clerks in municipalities and school districts holding elections that year. The official supplemental ballot must conform in all respects to the example supplemental ballot. Failure of the official supplemental ballot to conform may be reported by any person to the county attorney in the same manner as provided by section 201.275.